

AMENDED IN ASSEMBLY APRIL 17, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2760

Introduced by Assembly Member Leno
(Coauthor: Assembly Member Hancock)

February 22, 2008

An act to amend Section 21151.1 of the Public Resources Code, relating to the environment, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2760, as amended, Leno. Environment: CEQA: pest eradication.

(1) The California Environmental Quality Act requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

Existing law authorizes the Secretary of Food and Agriculture to notify specified entities before aerial spraying of a pesticide to effect the eradication of a pest if the eradication project is located in a urban area.

This bill would require the preparation of an environmental impact report or the modification, addendum, or supplement to an existing environmental impact report for the application of pesticide in an urban area for the eradication of light brown apple moth.

(2) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21151.1 of the Public Resources Code
2 is amended to read:
3 21151.1. (a) Notwithstanding paragraph (6) of subdivision (b)
4 of Section 21080, or Section 21080.5 or 21084, or any other
5 provision of law, except as provided in this section, a lead agency
6 shall prepare or cause to be prepared by contract, and certify the
7 completion of, an environmental impact report or, if appropriate,
8 a modification, addendum, or supplement to an existing
9 environmental impact report, for a project involving any of the
10 following:
11 (1) (A) The burning of municipal wastes, hazardous waste, or
12 refuse-derived fuel, including, but not limited to, tires, if the project
13 is either of the following:
14 (i) The construction of a new facility.
15 (ii) The expansion of an existing facility that burns hazardous
16 waste that would increase its permitted capacity by more than 10
17 percent.
18 (B) This paragraph does not apply to a project exclusively
19 burning hazardous waste, for which a final determination under
20 Section 21080.1 has been made prior to July 14, 1989.
21 (2) The initial issuance of a hazardous waste facilities permit
22 to a land disposal facility, as defined in subdivision (d) of Section
23 25199.1 of the Health and Safety Code.
24 (3) The initial issuance of a hazardous waste facilities permit
25 pursuant to Section 25200 of the Health and Safety Code to an
26 offsite large treatment facility, as defined pursuant to subdivision
27 (d) of Section 25205.1 of the Health and Safety Code.
28 (4) A base reuse plan as defined in Section 21083.8.1. The
29 Legislature hereby finds that no reimbursement is required pursuant
30 to Section 6 of Article XIII B of the California Constitution for an
31 environmental impact report for a base reuse plan if an
32 environmental impact report is otherwise required for that base
33 reuse plan pursuant to any other provision of this division.
34 (5) The application of a pesticide, as defined pursuant to Section
35 12753 of the Food and Agricultural Code, by the Department of

1 Food and Agriculture in an urban area for an eradication project
2 for light brown apple moth.

3 (b) For purposes of clause (ii) of subparagraph (A) of paragraph
4 (1) of subdivision (a), the amount of expansion of an existing
5 facility shall be calculated by comparing the proposed facility
6 capacity with whichever of the following is applicable:

7 (1) The facility capacity authorized in the facility's hazardous
8 waste facilities permit pursuant to Section 25200 of the Health and
9 Safety Code or its grant of interim status pursuant to Section
10 25200.5 of the Health and Safety Code, or the facility capacity
11 authorized in a state or local agency permit allowing the
12 construction or operation of a facility for the burning of hazardous
13 waste, granted before January 1, 1990.

14 (2) The facility capacity authorized in the facility's original
15 hazardous waste facilities permit, grant of interim status, or a state
16 or local agency permit allowing the construction or operation of
17 a facility for the burning of hazardous waste, granted on or after
18 January 1, 1990.

19 (c) For purposes of paragraphs (2) and (3) of subdivision (a),
20 the initial issuance of a hazardous waste facilities permit does not
21 include the issuance of a closure or postclosure permit pursuant
22 to Chapter 6.5 (commencing with Section 25100) of Division 20
23 of the Health and Safety Code.

24 (d) Paragraph (1) of subdivision (a) does not apply to a project
25 that does any of the following:

26 (1) Exclusively burns digester gas produced from manure or
27 any other solid or semisolid animal waste.

28 (2) Exclusively burns methane gas produced from a disposal
29 site, as defined in Section 40122, that is used only for the disposal
30 of solid waste, as defined in Section 40191.

31 (3) Exclusively burns forest, agricultural, wood, or other biomass
32 wastes.

33 (4) Exclusively burns hazardous waste in an incineration unit
34 that is transportable and that is either at a site for not longer than
35 three years or is part of a remedial or removal action. For purposes
36 of this paragraph, "transportable" means any equipment that
37 performs a "treatment" as defined in Section 66216 of Title 22 of
38 the California Code of Regulations, and that is transported on a
39 vehicle as defined in Section 66230 of Title 22 of the California
40 Code of Regulations, as those sections read on June 1, 1991.

1 (5) Exclusively burns refinery waste in a flare on the site of
2 generation.

3 (6) Exclusively burns in a flare methane gas produced at a
4 municipal sewage treatment plant.

5 (7) Exclusively burns hazardous waste, or exclusively burns
6 hazardous waste as a supplemental fuel, as part of a research,
7 development, or demonstration project that, consistent with federal
8 regulations implementing the Resource Conservation and Recovery
9 Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been
10 determined to be innovative and experimental by the Department
11 of Toxic Substances Control and that is limited in type and quantity
12 of waste to that necessary to determine the efficacy and
13 performance capabilities of the technology or process. However,
14 a facility that operated as a research, development, or demonstration
15 project and for which an application is thereafter submitted for a
16 hazardous waste facility permit for operation other than as a
17 research, development, or demonstration project shall be considered
18 a new facility for the burning of hazardous waste and shall be
19 subject to subdivision (a).

20 (8) Exclusively burns soils contaminated only with petroleum
21 fuels or the vapors from these soils.

22 (9) Exclusively treats less than 3,000 pounds of hazardous waste
23 per day in a thermal processing unit operated in the absence of
24 open flame, and submits a worst-case health risk assessment of
25 the technology to the Department of Toxic Substances Control for
26 review and distribution to the interested public. This assessment
27 shall be prepared in accordance with guidelines set forth in the Air
28 Toxics Assessment Manual of the California Air Pollution Control
29 Officers Association.

30 (10) Exclusively burns less than 1,200 pounds per day of
31 medical waste, as defined in Section 117690 of the Health and
32 Safety Code, on hospital sites.

33 (11) Exclusively burns chemicals and fuels as part of firefighter
34 training.

35 (12) Exclusively conducts open burns of explosives subject to
36 the requirements of the air pollution control district or air quality
37 management district and in compliance with OSHA and Cal-OSHA
38 regulations.

1 (13) Exclusively conducts onsite burning of less than 3,000
2 pounds per day of fumes directly from a manufacturing or
3 commercial process.

4 (14) Exclusively conducts onsite burning of hazardous waste
5 in an industrial furnace that recovers hydrogen chloride from the
6 flue gas if the hydrogen chloride is subsequently sold, distributed
7 in commerce, or used in a manufacturing process at the site where
8 the hydrogen chloride is recovered, and the burning is in
9 compliance with the requirements of the air pollution control
10 district or air quality management district and the Department of
11 Toxic Substances Control.

12 (e) Paragraph (1) of subdivision (a) does not apply to a project
13 for which the State Energy Resources Conservation and
14 Development Commission has assumed jurisdiction under Chapter
15 6 (commencing with Section 25500) of Division 15.

16 (f) Paragraphs (2) and (3) of subdivision (a) do not apply if the
17 facility only manages hazardous waste that is identified or listed
18 pursuant to Section 25140 or 25141 of the Health and Safety Code
19 on or after January 1, 1992, but not before that date, or only
20 conducts activities that are regulated pursuant to Chapter 6.5
21 (commencing with Section 25100) of Division 20 of the Health
22 and Safety Code on or after January 1, 1992, but not before that
23 date.

24 (g) This section does not exempt a project from any other
25 requirement of this division.

26 (h) For purposes of this section, offsite facility means a facility
27 that serves more than one generator of hazardous waste.

28 *SEC. 2. This act is an urgency statute necessary for the*
29 *immediate preservation of the public peace, health, or safety within*
30 *the meaning of Article IV of the Constitution and shall go into*
31 *immediate effect. The facts constituting the necessity are:*

32 *To ascertain the environmental and health effects of the pesticide*
33 *used in the eradication of the light brown apple moth on the urban*
34 *residents before the commencement of the eradication project in*
35 *the San Francisco Bay area on or about August 1, 2008, it is*
36 *necessary for this measure to take effect immediately.*